



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[EPA-HQ-OAR-2021-0566; FRL-9090-01-OAR]

## Notice of Opportunity to Comment on Proposed Denial of Petitions for Small Refinery

### Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed denial of petitions.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to deny all undecided/pending small refinery exemption petitions under the Renewable Fuel Standard program currently before the agency. EPA is providing an opportunity for the public to comment on our proposed denial of these petitions.

**DATES:** Comments must be received on or before **February 7, 2022**.

**ADDRESSES:** *Comments.* You may send your comments, identified by Docket ID No. EPA-HQ-OAR-2021-0566, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> (our preferred method) Follow the online instructions for submitting comments.
- E-mail: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2021-0566 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4657; email address: [nelson.karen@epa.gov](mailto:nelson.karen@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Clean Air Act (CAA) provides that a small refinery<sup>1</sup> may at any time petition EPA for an exemption from the obligations of the Renewable Fuel Standard (RFS) program for the reason of disproportionate economic hardship (DEH).<sup>2</sup> In evaluating such petitions, the EPA

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<sup>1</sup> The CAA defines a small refinery as “a refinery for which the average aggregate daily crude oil throughput for a calendar year ... does not exceed 75,000 barrels.” CAA section 211(o)(1)(K).

<sup>2</sup> CAA section 211(o)(9)(B)(i).

Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.<sup>3</sup>

The CAA provided an initial blanket small refinery exemption (SRE) to all small refineries, exempting them from their RFS obligations until calendar year 2011.<sup>4</sup> The CAA includes two additional provisions regarding extensions of the temporary exemption for the period after the initial blanket exemption expired. The first statutory mechanism, applicable to 2011 and 2012, was based on a DOE determination, through the above-mentioned study, that compliance with the RFS requirements would impose DEH on a small refinery. If DOE made such a determination, EPA was required to extend the small refinery's exemption for no less than two years.<sup>5</sup> Under the second statutory mechanism, small refineries are authorized to petition at any time for extensions of the original statutory exemption for the reason of DEH.<sup>6</sup> Since 2013, EPA has shared the incoming petitions and supporting information with DOE, and DOE has provided EPA with its findings based on a scoring matrix; however, the ultimate decision of whether to grant or deny a petition rests with EPA.<sup>7</sup>

## **II. Proposed Decision**

In the Proposed RFS Small Refinery Exemption Decision (hereinafter “the proposed adjudication,” available in the docket for this action (Docket ID No. EPA-HQ-OAR-2021-0566) and on EPA's website at <https://www.epa.gov/renewable-fuel-standard-program/proposal-deny-petitions-small-refinery-exemptions>), we have conducted an extensive analysis and review of information provided by small refineries in their SRE petitions to EPA, finding that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels or purchased on the open market. This happens because the market

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<sup>3</sup> CAA section 211(o)(9)(B)(ii).

<sup>4</sup> CAA section 211(o)(9)(A)(i).

<sup>5</sup> CAA section 211(o)(9)(A)(ii)(II).

<sup>6</sup> CAA section 211(o)(9)(B)(i).

<sup>7</sup> More information on the RFS program and the history of SREs, including how EPA's approach to evaluating SRE petitions has changed over time, can be found in Section II of the “Proposed RFS Small Refinery Exemption Decision,” available in the docket for this action.

price for these fuels increases to reflect the cost of the RIN, much as it would increase in response to higher crude prices. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN costs through the market price of the fuel they produce. Because the market behaves this way for all parties subject to the RFS, there is no disproportionate cost to any party, including small refineries. As a result, we conclude that small refineries do not face DEH.

Given this conclusion and the other reasons described in the proposed adjudication, we are proposing to deny all pending SRE petitions by finding the petitioning refineries do not face DEH caused by compliance with their RFS obligations. We seek comment on all aspects of this proposed denial, most notably on our conclusions that the CAA requires small refineries to demonstrate that DEH is caused by compliance with the RFS program and our economic analyses concluding that no small refineries face such disproportionate costs of compliance due to the RFS program. Specifically, we seek comment on our findings regarding the absence of a causal relationship between compliance with the RFS program and DEH experienced by small refineries. We request additional data that would show the relationship between RFS compliance costs and the price of transportation fuel blendstocks. We also seek comment on our proposed change in approach to SRE eligibility based on receipt of the original statutory exemption, and our decision to deny all pending/undecided SRE petitions based on the proportional nature of the RFS requirements and our findings regarding RIN cost passthrough. We intend to consider these comments before making a final determination on these pending petitions.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.